

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

CRAIG LAWRENCE)	
)	
v.)	00-0162
)	
ILLINOIS BELL TELEPHONE COMPANY)	
(AMERITECH ILLINOIS))	
)	
Complaint as to local toll charge billing &)	
pricing, and violations of Ill. Adm. Code,)	
Chap. 1, Part 735 in Chicago, Illinois)	

DRAFT HEARING EXAMINER’S PROPOSED ORDER

I. PROCEDURAL HISTORY

On February 14, 2000, Craig Lawrence (“Complainant” or “Lawrence”) filed a complaint against Ameritech Illinois (“Ameritech”) alleging that he is not financially responsible for certain charges to his residential telephone account at 2513 North California, in Chicago, Illinois.

Pursuant to notice as required by law and the rules and regulations of the Commission, this matter came on for hearing before a duly authorized Hearing Examiner at the Commission’s offices in Chicago, Illinois on April 19, 2000 and July 20, 2000.

At the initial status hearing, held on April 19, the Complainant appeared pro se and Ameritech Illinois was represented by counsel. In addition to scheduling, the parties addressed the disconnection of the Complainant's service. The Hearing Examiner ruled that "the company was within their rights to disconnect" service in light of the significant time lag between the completion of the Complainant's informal complaint and the filing of his formal complaint with the Commission. (Tr. 7). However, the Hearing Examiner requested that service be provided while the complaint was pending, because the Complainant had made a good-faith effort to follow the Commission's rules. As the Hearing Examiner stated, "the company has the right to disconnect but I think that he's made a good faith effort to follow through with the procedures, so if that could occur, that would be great." (Tr. 14). Ameritech Illinois reconnected service and continued to provide service to the Complainant while the Complaint was pending.

On May 18, 2000, Ameritech Illinois moved to dismiss the Complaint. The Complainant filed a Response on June 26, 2000 and Ameritech Illinois filed its Reply in Support of Motion to Dismiss on July 7, 2000. Counsel for Ameritech Illinois was present at the second hearing on July 20; the Complainant did not appear. At the conclusion of the hearing, the record was marked "Heard and Taken."

II. THE COMPLAINT

The Complaint stems from "local toll" (i.e., Band C local usage) charges billed to the Complainant after he changed the access number for his internet service provider ("ISP"). Although the Complainant's new access number was in the same area code as

its predecessor, the “serving wire center” of the ISP was more than 15 miles from the Complainant’s serving wire center, and calls to the ISP were therefore Band C calls. Calls to the new ISP resulted in per-minute charges at Ameritech Illinois’ tariffed rates, beginning with the bill dated September 28, 1999 and received by the Complainant in October 1999. The Complainant seeks three forms of relief: (1) an order finding that he is not “responsible for the charges in dispute,” (2) an order requiring Ameritech Illinois to “make a concerted effort to inform the consumer about ... band A, B, & C pricing structures, and their effect on selecting numbers with Internet Service Providers,” and (3) an order requiring Ameritech Illinois to “itemize local toll charges in accordance with and as specified in” 83 Illinois Administrative Code Section 735.70(b)(1)(G). In addition, the Complainant claims that, under Section 735.70 (1-2) of the Commission’s Rules, a special toll bill should have been issued by Ameritech Illinois, which Complainant alleges would have prevented further Band C local usage charges from being incurred.

III. AMERITECH ILLINOIS’ POSITION

Ameritech Illinois’ primary argument is that the Complaint is barred by the filed rate doctrine. Ameritech Illinois argues that it is prohibited by law from charging or receiving payment other than at the “rates or other charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time 220 ILCS 5/9-240, 5/9-243; see American Telephone and Telegraph Co. v. Central Office Telephone, Inc., 524 U.S. 214, 221-222 (1998). Therefore, under the filed rate

doctrine, Ameritech Illinois' rates for services are established in its tariffs, which are filed with, and approved by, the Commission. Those include the Band C local usage rates at issue here. Ameritech Illinois contends that its filed tariffs provide legally sufficient notice of the carrier's rates, without regard to what the customer may have been told, or not told, about the carrier's rates. See, e.g., Maislin Industries v. Primary Steel, Inc., 497 U.S. 116, 120 (1990); Marcus v. AT&T, 138 F.3d 46, 58-59 (2d Cir. 1998); Louisville & Nashville Ry. Co. v. Mead Johnson & Co., 737 F.2d 683, 686 (7th Cir. 1984).

"Customers are presumed to have constructive knowledge of the rates governing their telecommunications service." Fax Telecomunicaciones v. AT&T, 952 F. Supp. 946, 951 (S.D.N.Y. 1996); accord Marcus, 138 F. 3d at 58-59; Colonial Fast Freight Lines, Inc. v. Howard Love Mach. Supply, Inc., 838 F. Supp. 308, 310 n.1 (E.D. Tex. 1993). Thus, Ameritech Illinois argues, "Ignorance or misquotation of rates is not an excuse for paying or charging either less or more than the rate filed." Louisville & Nashville Ry. Co. v. Maxwell, 237 U.S. 94, 97 (1915) (quoted with approval in American Telegraph and Telephone Company v. Central Office Telephone, 524 U.S. at 222); see Marcus, 138 F.3d at 62-63.

Ameritech Illinois also disputes the Complainant's characterization of the facts. Ameritech Illinois observes that the Complainant has acknowledged that he was aware that Band C local usage charges might be incurred. The Complainant has also acknowledged that his ISP had informed him that he should call his local telephone company to see if additional charges would apply to the new number. In addition, Ameritech Illinois argues that it provides customers with information concerning the

usage Band within which a call may fall, in at least three ways: (1) as a direct response to a customer's specific telephone request, (2) by providing lists of local calling areas through the Customer Care Center, and (3) through Ameritech Illinois' website. Finally, the Complainant's telephone bills clearly categorize his local, direct dialed calls depending on the distance involved. Of the three categories (0-8 miles, 8+ miles, and 15+ miles), the 15+ category is clearly labeled "local toll."

Next, Ameritech Illinois argues that nothing in the Commission's rules requires that a carrier's rate structure be explained in detail on customers' bills or that local usage detail be provided in each monthly bill. To the contrary, the rules define the level of detail required in a telephone bill, but they do not require that a carrier's "rate structure" be explained or that "local calls [must be] broken down by band or rate" as the Complainant argues. Compare 83 Ill. Admin. Code § 735.70(b)(1) with Response at 2. The rules specifically permit all local usage to be billed as a lump sum. 83 Ill. Admin. Code § 735.70(b)(1-2). The rules also provide that the itemization of local usage detail need only be provided at the customer's request (without an additional charge) once every six months—not as a part of every monthly bill. Id. at § 735.70(b)(3).

Ameritech Illinois further contends that the level of detail the Complainant requests would be impractical and inappropriate as a matter of policy. For example, the Complainant's September 1999 bill included 110 local usage calls. Explaining the "Band A, B & C rate structure" would be even more complicated. To provide that information, Ameritech Illinois' bills would need to present its entire residential rate structure,

including rates for peak, off-peak and shoulder peak usage, volume discounts and available optional calling plans.

Finally, Ameritech Illinois argues that providing the additional information sought by the Complainant would have had no significant impact on his bills in this case, because the Complainant concedes that the level of detail in the bills he received was adequate to alert him to the charges that resulted in this complaint. The Complainant argues, “All of the bills in question accumulated in less than two billing cycles. The bill accumulated so quickly that upon receipt of the first unusually high bill, the Complainant immediately called Ameritech” to discuss the source of the charges in question. Thus, whatever the level of detail provided in the Complainant’s bill, he would have been aware of the increased charges no sooner than he actually was—upon receiving his first monthly bill.

Regarding itemized billing, Ameritech Illinois contends that Section 735.70 of the Commission’s Rules requires itemization only for long distance calls, where a local exchange company assumes billing responsibility for those calls. 83 Ill. Admin. Code § 735.70(b)(1)(G). This practice is implemented by Ameritech Illinois’s tariff, which states: “Detail call information such as, the time at which made, duration and destination will not be provided other than for long distance telecommunications message service.” Ill. C.C. No 20, Part 2, § 2 ¶ 10 Subpara 10.6. The Code does permit the customer to obtain an itemized billing for local message detail under certain circumstances, but not as a matter of course. 83 Ill. Admin. Code § 735.70(b)(3).

Concerning special toll bills, Ameritech Illinois argues that the Complainant has no “right” to be provided with a special toll bill. According to Ameritech Illinois, Section 735.70 (I) of the Commission’s Rules, which governs special toll bills, provides: “(1) If a customer accumulates unusually high charges for toll calls in a short period of time, and that customer’s credit record indicates that satisfactory payment may not be made on this amount, a company may issue a special toll bill” (emphasis supplied). This provision clearly permits, but does not require, a company to issue a special toll bill under the applicable circumstances.

Regarding late payment fees on the unpaid amount of his bill, Ameritech Illinois argues that such fees are appropriate under Section 735.190(d)(2) of the Commission’s rules. The rule provides, “No late payment charge shall be charged on any disputed bill paid within fourteen (14) days of resolution of the dispute if the complaint was filed before the bill became past due.” 83 Ill. Admin. Code § 735.190(d)(2) (emphasis added). The Complainant’s September 1999 bill (upon which the majority of the charges at issue appeared) became past due on October 26, 1999. The Complainant did not file his informal complaint until approximately two weeks later, on November 8, 1999. Thus, Ameritech Illinois concludes that the complaint was filed too late to fall within Section 735.190(d)(2), and accrual of late payment charges is clearly permitted by the rule.

IV. THE COMPLAINANT'S POSITION

The Complainant argues that the application of the filed rate doctrine is not appropriate if a reasonable person could not be made aware of the carrier's rates by examining the monthly bill. The Complainant contends that a reasonable person would not believe that phone calls within the same municipality and area code would be billed at Band C rates.

The Complainant further argues that Ameritech Illinois has engaged in a deceptive billing practice, by failing to explain its local toll rate structure in its bills. The Complainant concedes that his ISP's sign up process included the following statement: "You may want to check with your local phone company to see if additional charges may apply." However, the Complainant says that he "did not feel it necessary to do so because I was selecting a number within my own area code, municipality and local calling area." The Complainant also concedes that he was provided with a "Reminder About Internet Charges," which stated, "During the time you are on the internet, charges for local message or usage, local toll or long distance may apply."

Regarding itemization of calls, the Complainant contends that 83 Ill. Admin. Code § 735.70(b)(1)(G) does not distinguish between *local* toll calls and *long distance* toll calls.

Regarding the issuance of a special toll bill, the Complainant concedes that Ameritech Illinois “had the option of issuing a special toll bill to the Complainant.” The Complainant contends that Ameritech Illinois should have done so, to allow the Complainant to correct the situation before the balance grew to hundreds of dollars.

The Complainant also questions: (1) the disconnection of his service and (2) the billing of late payment charges during the pendency of the Complaint.

V. COMMISSION ANALYSIS AND CONCLUSION

The Commission agrees with Ameritech Illinois’ position that the Complaint is barred by the filed rate doctrine. As Ameritech Illinois argues, it is prohibited by law from charging or receiving payment other than at the “rates or other charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time” 220 ILCS 5/9-240. A carrier’s tariffs provide legally sufficient notice of its rates. See, e.g., Maislin, 497 U.S. at 120; Marcus, 138 F.3d at 58-59. As Ameritech Illinois contends, “Customers are presumed to have constructive knowledge of the rates governing their telecommunications service.” Fax Telecommunicaciones, 952 F. Supp. at 951. “Ignorance or misquotation of rates is not an excuse for paying or charging either less or more than the rate filed.” Louisville & Nashville Ry. Co. v. Maxwell, 237 U.S. 94, 97 (1915) (quoted with approval in American Telegraph and Telephone Company v. Central Office Telephone, 524 U.S. at 222); see Marcus, 138 F.3d at 62-63.

Moreover, apart from the filed rate doctrine, the Commission also finds, as fact, that the Complainant had adequate notice of the rates governing his telephone service. The Complainant concedes that he had been advised by his ISP that Band C local charges might be incurred. He also concedes that he became aware of the specific charges upon receipt of his first bill. To require Ameritech Illinois to provide the additional information requested by the Complainant would be impractical and inappropriate as a matter of policy.

The Commission also agrees with Ameritech's position that our Rules permit, but do not require, the issuance of a special toll bill in a situation in which the customer's credit record calls into question his ability to pay unusually high charges incurred in a short period of time. 83 Ill. Admin. Code § 735.70 (I).

The Commission also adopts Ameritech Illinois' position that late payment charges were legitimately accrued in this case. 83 Ill. Admin. Code § 735.190(d)(2).

Finally, it was determined at the initial status hearing that Ameritech Illinois lawfully disconnected the Complainant's service. The Commission also notes that Ameritech Illinois reconnected his service during the pendency of the Complaint.

VI. COMMISSION FINDINGS AND ORDERING PARAGRAPHS

The Commission, having reviewed the evidence and pleadings of record, and being fully advised in the premises, is of the opinion and finds as a matter of law that:

- (1) Illinois Bell Telephone Company (Ameritech Illinois) is an Illinois corporation engaged in furnishing telephone service in the State of Illinois and, as such, is a telecommunications service within the meaning of Section 13-202 of the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties and the subject matter herein;
- (3) Lawrence is the customer of record for the account at 2513 North California, Chicago, Illinois;
- (4) Ameritech Illinois's billing of Lawrence for telephone services at 2513 North California is accurate;
- (5) the rates for local toll service as set forth in Ameritech Illinois's approved tariff are binding and Lawrence's complaint and related claims may properly be denied;

IT IS THEREFORE ORDERED that the Complaint filed by Craig Lawrence on February 14, 2000 be, and the same is, hereby denied.

IT IS FURTHER ORDERED that this Order is final; it is not subject to the provisions of the Administrative Review Law.

By Order of the Commission this _____ day of _____, 2000.

(SIGNED) RICHARD L. MATHIAS

Chairman

(S E A L)